

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 24 February 2015

**Public Authority:** Leybourne Parish Council  
**Address:** Leybourne Village Hall  
Little Market Row  
Leybourne  
Kent  
ME19 5QL

#### Decision (including any steps ordered)

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1. The complainant has requested financial information for the last five years from Leybourne Parish Council (the council). The council initially relied on section 12 of the FOIA to refuse to provide the requested information as it considered that the cost of providing it would be excessive. During the course of the Commissioner's investigation, the council changed its position and determined that the request was vexatious and that section 14 therefore applied.
2. The Commissioner's decision is that the council was correct to rely on section 14 and so does not require it to take any steps.

#### Request and response

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3. On 1 July 2014 the complainant made the following request for information under the FOIA:  
  
*"Under the Freedom of Information Act 2000, would you kindly supply me, within the next 20 working days, a copy of the Leybourne Parish Council's FULL income and expenditure accounts for each month over the last five years, beginning April 2009, and including June and July 2014, by means of a stick, chip or e-mail."*
4. The council responded in an undated letter, received by the complainant on 18 July 2014, and refused to provide the requested information

stating that the costs to extract and find the information were estimated to be excessive.

5. The complainant reiterated his request on 6 August 2014 and stated that he expected the council to hold the information in electronic format and that it would therefore be easily obtainable and up to date. The Commissioner considers this to be a request for an internal review.
6. The council responded on 17 September 2014 and maintained its position that section 12 of the FOIA applied as the cost of dealing with the request would be excessive. The response went into some detail in explaining the financial arrangements at the council, citing multiple recording systems, limited archive facilities and the parish clerk's many responsibilities as reasons why the cost of responding would be excessive.
7. During the course of the Commissioner's investigation, the council wrote to the complainant on 9 December 2014 to inform him that it was changing its stance and it now relied on section 14 as it considered the request to be vexatious.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 18 July 2014 to complain about the way his request for information had been handled.
9. The Commissioner initially considered the scope of this case to be to determine whether the council was correct to rely on section 12 to withhold the requested information. However, after the council had informed him of its late reliance on section 14, the Commissioner now considers the scope of the case to be to determine whether the council was correct to say that the request was vexatious and that section 14 applied.

### **Reasons for decision**

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10. The council has stated that due to the wording of the complainant's request which asked for "Full Income and Expenditure accounts" it considered that it does not hold all the information requested. It said that only councils with a turnover in excess of £200,000 are required to keep accounts to this level of accounting detail. It was only required to operate on a receipts/payments basis, in accordance with the recommendations of the "Governance and Accountability for Local Councils – A Practitioners' Guide (England) 2010", these are much

simpler. The Commissioner does not agree with the council's interpretation of the request in this manner.

11. The complainant provided the Commissioner with a copy of the minutes from a meeting of a nearby parish council which included a list of the cheques for signature and the bank reconciliation for that month. He advised the Commissioner that this is what he had expected the council to hold and to provide him with. The council has provided the Commissioner with an extract its cashbook and its financial statement and the Commissioner finds these to be in a very similar format to the information from the nearby council. The Commissioner therefore considers that the council does hold the information the complainant has requested to the extent discussed in this notice.

### **Section 14 – vexatious requests**

12. Section 1(1) of the FOIA provides a general right of access to recorded information that is held by public authorities. Section 14(1) of the FOIA states the following:

*"Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious".*

13. The Commissioner has published guidance on applying section 14(1) of FOIA.<sup>1</sup> The Commissioner's guidance states that the relevant consideration is whether the request itself is vexatious rather than the individual submitting it. Sometimes, it will be patently obvious when requests are vexatious. In cases where it is not so clear-cut, the key question to ask is whether the request is likely to cause a disproportionate or unjustified level of disruption, irritation or distress. This will usually be a matter of objectively judging the evidence of the impact on the authority and weighing this against any evidence about the purpose and value of the request. Public authorities may also take into account the context and history of the request where relevant.
14. As in many cases which give rise to the question of whether a request is vexatious, the evidence in the present case shows a history of various encounters between the parties which has led to the request being

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[http://ico.org.uk/for\\_organisations/guidance\\_index/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/dealing-with-vexatious-requests.ashx](http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/dealing-with-vexatious-requests.ashx)

considered here. The council relies on this history, as well as the burden of this request when characterising it as vexatious.

### **Disproportionate Burden**

15. In the first instance, the council considers that although it has not met the threshold for applying section 12 to the request, it none-the-less considers that the burden in dealing with it is not proportionate to its perceived value. In its initial responses to the Commissioner which dealt with its application of section 12, the council went to some lengths to explain the time it would take to provide the information and the disproportionate burden this places on the council in view of its very small size.
16. The council explained to the Commissioner that the parish clerk who had been in place at the time of the original request had resigned on 1 August 2014 and so for the majority of the time the council has been dealing with this request and this investigation, it has only had a temporary part time clerk. A new permanent parish clerk began work at the council at the beginning of January. The parish clerk is the only paid officer of the council and as such, the strain this request has on its resources has been felt heavily. The permanent parish clerk position is a 30 hour week, and as the only paid officer of the council, all the work for dealing with the request would ordinarily fall to them to complete, and this must be done as part of their normal duties.
17. As part of its determination of the burden the request places on the council, it explained how the information is held. It operates a receipts/payments and bank reconciliation process (based on gross figures), this is referred to as the cashbook. It operates a separate budget performance process (based on net & vat figures), called the financial statement, and both run on a monthly cycle, and both are currently recorded on a monthly spreadsheet. The council states that it is the responsibility of the parish clerk to prepare and maintain these records and present them to the monthly Finance Committee. The current format of these monthly spreadsheets is held back to February 2013.
18. The council has explained that it has had five clerks in the timeframe specified by the request, including 3 periods with no clerk, and therefore the older financial information is held in a variety of ways. In responding to the initial section 12 enquiries, the council undertook what it has referred to as an 'initial search' of its records and has located partial hardcopy as well as computer records dating to April 2010. It has said that it took two councillors and the temporary parish clerk around five hours in total to locate this information. It has further explained that the records between April 2009 and April 2010 were managed and held on a

software package that the council no longer has access to as it does not know the name of the company, nor whether it still exists. It has suggested that given the lapse of time since the system was used by the council, it is unlikely that any of its information has been retained.

19. It has advised that the council can, in principle, provide the requester with a copy of the financial information that has been retained. However, it would prefer to provide access in a form other than a copy of the relevant spreadsheets as it has concerns that these could be manipulated by anyone with access, and that some sheets will contain personal data which it will need to redact. It has informed the Commissioner that it has taken 30 minutes to extract, redact and reformat the two spreadsheets into pdf form for one month.
20. The Commissioner notes that time taken to redact and reformat information could not be taken into account in a section 12 consideration. However, as the council now relies on section 14, it can be considered as relevant to calculating the burden the request has on the council. The council has explained that the current cashbook and financial statement spreadsheets date back to February 2013, meaning there are 17 months of the current spreadsheet to prepare for disclosure. Taking the 30 minute estimate to extract, redact and reformat the monthly information as an upper limit, the time taken to ready this information for disclosure alone is 8.5 hours. Adding this, to the 5 hours already spent to determine what information is held, the total is 13.5 hours. The council has not provided any further estimates as to how long it would take to extract and redact the information from April 2010 to February 2013. However, given the amount of time estimated for the most recent 17 months, even halving it for the remaining 34 months would give a total estimate of 31.5 hours, just over a week of the parish clerk's time.
21. The Commissioner appreciates that if this estimate is anywhere near accurate, or even if it was halved, given that the clerk is the only paid officer at the council, the burden this request would have on the council is great. The council has informed the Commissioner of a number of services, tasks and initiatives that have suffered as a result of the time it has spent dealing with the complainant both generally, and in relation to this request and investigation. An extension has had to be sought for completion of a Heritage Lottery Funded World War One project; no further work has been undertaken on the Village Hall extension project since September 2014; the employment of a handyman, community warden and youth leader have not been finalised as there has been no time to define the job roles. The council states that whilst these specific tasks have suffered, the activities involved normal running of the council have had to be skimmed over or left undone. These include managing traffic safety, dog fouling, littering, drug use, anti-social behaviour,

parking, housing development planning input, and reviewing or maintaining parish policy documents.

22. The Commissioner does not accept that it is fair to determine that all of these tasks have been left undone or skimmed over as a result of the request and the complainant's interactions with the council, as this has also coincided with a period when the council is without a permanent parish clerk. However, he sees that the council has had to divert some of its resources into dealing with the request, and the further work that would be required to comply with it would divert yet more.

### **Background and Context**

23. In addition to the burden the council considers the request has already created and would create if it was to disclose the information, it has also provided the Commissioner with information about the context and background in which the request was made, which it considers adds to its vexatious nature. It has described the complainant's interactions with the council as a "campaign of disruption".
24. It has explained that its engagement with the complainant began with a dispute over a strip of land within the parish. As part of a grant of £100k from the Lottery Fund, the council leased the land in question from Tonbridge and Malling Borough Council (TMBC) as part of a government initiative to encourage youngsters to take risks through play. A natural play area was installed and the decision was taken to leave the strip of land which borders the play area as a natural area. This was in order to create a buffer between the play area and the adjacent housing estate, limit access points, as well as to discourage littering and dog fouling. This situation was the status quo for four years until heavy rain in early summer resulted in overgrown vegetation. The complainant and his mother complained about the vegetation encroaching on the footpath and requested that the council laid the area to lawn. They complained to TMBC, but as the land was leased to the council, TMBC would not take any action. They then complained to Kent County Council (KCC) about the matter, and although KCC visited the area to cut back the vegetation, the complainant and his mother were not satisfied. They then complained about the matter to their local MP. He contacted the council about it, but after receiving its response, did not take the matter further.
25. On 8 July 2014, the complainant attended the Full Council Meeting and asked it to lay the land to lawn and install benches. The council voted to leave the land as it was as it was considered beneficial to keep it as a buffer and to discourage dog fouling. The council explained that shortly after the meeting, the complainant and his mother cut down the vegetation without the permission of the council. They were asked to

stop but refused to do so. Within two weeks, the complainant then complained to the council about the dog fouling on the land.

26. Following this series of events, the site officer raised a formal complaint with the council that the complainant was harassing and intimidating him as he carried out his duties around the play area and the strip of land. He alleged that the complainant was following him round commenting on how and what he was doing. In the same timeframe, the then parish clerk also submitted a formal complaint about the complainant to the council due to his harassing and intimidating behaviour. He had been visiting the parish offices, taking photographs and peering through the windows. The council explained that the clerk was reduced to tears by the behaviour and felt it necessary to lock herself in the office for protection.
27. The council feels strongly that its officers should be able to work without fear of harassment, bullying and intimidation from members of the public, and it therefore investigated these complaints in conjunction with KCC, TMBC, Kent Police and the Kent Association of Local Councils (KALC). This resulted in serving a Section 32 Banning (Exclusion) Order on the complainant banning him from the council offices and the play area for 12 months. In addition to this, a panic button was installed in the council offices with a direct link to the police. The banning order is still in force.
28. In a similar timeframe, the council also became aware that fake Twitter and Facebook accounts had been set up purporting to be official media outlets of the council and engaging with the public. The council brought the matter to the attention of the Police and it transpired that the complainant had set up the fake accounts. He was interviewed by the Police and was advised to stop his activities. He has since changed the names of the accounts, although phonetically they still sound the same, replacing the word 'council' for 'counsel'. The council has explained that derogatory and inflammatory comments were posted on the accounts, but since the police involvement, many have been deleted. The Commissioner was able to locate the Twitter account and has noted that a number of the remaining comments do cast the council in a negative light. A common theme is to publicise the council's meetings then make a comment such as "We may need to throw you all out due to confidentiality! Haha". Comments such as this are put into context as the council has explained that all discussions about individuals are held in closed sessions to ensure confidentiality, including discussions about the council's responses to the complainant's request. In addition, it explained that at the October 2014 council meeting, it asked the complainant to leave due to his behaviour and unacceptable language.

29. The council has informed the Commissioner that during the period of dealing with this request, the complainant has also raised a Code of Conduct complaint about 9 of the 10 councillors regarding the timing of the submission of their Declaration of Personal Interests. This complaint was investigated by TMBC Joint Standards Committee, and the panel rejected the complaint. The council's view is that the Code of Conduct complaint is an example of the complainant seeking new avenues of complaint to discredit the council and/or its councillors. The council therefore considers that the request forms part of this pattern of behaviour, and is just another part of his campaign to discredit the council.
30. Additional arguments regarding the background and context of the request are contained within a confidential annex to this decision notice.

### **Serious Purpose of the Request**

31. The Commissioner considers that even where a request could be viewed as unduly burdensome on a public authority, this can be mitigated if there is an overwhelmingly serious purpose behind the request. This can be both in terms of a wider public interest in the information, as well as a genuine need for the information by the requester in pursuing a legitimate aim. To this end, deciding whether a request is vexatious is ultimately a balancing act between the impact of the request on the public authority, and the serious purpose of the request.
32. The complainant maintains that there is a serious purpose to his request. He has explained that in a general sense he wishes to be able to scrutinise the council's finances and believes that there is a public interest in the council being open about what it spends its parishioner's council tax money on. He does not accept that the very scant overview of the accounts which was published in the annual accounts meets the public interest.
33. He has explained to the Commissioner that KALC's best practice advice is to publish monthly financial information as part of monthly meeting agendas, and that neighbouring council's adopt this practice. He has said that this is what he expects from the council. The complainant has provided the Commissioner with copies of the neighbouring council's finance information, and the Commissioner has noted that whilst it is similar in nature to the cashbook and financial statement spreadsheets which are held by the council, it does not appear to go to the same level of detail as is recorded by the council for its own administration purposes.
34. The complainant has also provided the Commissioner with some more specific reasons for making the request. The first reason relates to the



Lottery Fund grant for the play area from which the complainant's recent engagement with the council stems. He has said that he has contacted the contractor who installed the play equipment and has been told the cost of the equipment and installation. He therefore considers that there is missing money which he wants the council to account for.

35. The second reason is that a member of the finance committee is also chairman of Leybourne Athletic Football Club and the council recently donated £250 to the football club. The complainant has said that he is particularly concerned about this as the councillor in question is one about whom he made a Code of Conduct complaint regarding the late submission of Declarations of Personal Interest.
36. It is the contention of the council that the complainant seeks the information in order to search out further avenues to pursue against the council. The complainant has not specified this as a purpose to his request, however, as he has mentioned that he is concerned that the council has not fully accounted for the expenditure of the £100k Lottery Fund grant on the play area, it is a likely consequence that the complainant will seek evidence of this in the financial records and will try to use it against the council.

## **Conclusions**

37. The Commissioner has considered all the information provided by both the council and the complainant. He notes that on the face of it, the request being considered here seems to be quite separate from the matters which the council has cited as the context and background to the request. A dispute over the appearance and use of a small strip of land would not initially seem related to a request for financial information dating back to 2009. However, in the context of the complainant's concerns that the Lottery Funding which was used to create the playground linked to the strip of land, it becomes more apparent that the two matters are related.
38. In addition to this, it is clear to the Commissioner that the council has had to take the specific steps, as detailed in the confidential annex, to counter and manage the complainant's behaviour. It is also clear to the Commissioner that although the request would appear to be a straight forward one, due to the way the information is held by the council, and the necessity to redact it to remove personal data, complying with it would create quite a considerable burden on the council. Given the very small size of the council and the limited administrative resources available to it, this burden is felt far more heavily than if the same request had been made to a larger public authority such as a borough or county council.

39. The Commissioner accepts that there is an element of serious purpose to the request, as the financial information about the council that is currently publically available is limited, and there is always a public interest in the transparency of spending public money. He also accepts that the complainant considers he has a personal serious purpose in seeking to determine that the Lottery Fund grant was spent appropriately. However, he also notes that the council has changed its practices with regard to the recording and retaining of financial information and since the start of the 2014 financial year. The parish clerk has been instructed to ensure that a hard copy of the financial sheets provided to the monthly finance committee is made and filed with the minutes of that meeting, which are available for public inspection.
40. The Commissioner has balanced the serious purpose of the request with the burden and disruption dealing with it would have on the council. He has concluded that the amount of work the request would entail, along with the pattern of behaviour of the complainant and the serious steps the council has taken to combat it would be disproportionate to the limited value in the request. He therefore finds that the council was correct to rely on section 14.

## Right of appeal

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41. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
43. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
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**SK9 5AF**